

Appl. No. : 10/676,770
Filed : October 1, 2003

respectfully submit that those skilled in the art would attribute any biocidal activity of those compounds to the amine salt portion of the composition, not to the borate, because amine salts are well known as biocides. For example, U.S. Patent No. 5,529,713 discloses various amine salts useful as biocides, *see col. 1, lines 41-43; col. 2, lines 45-48; and col. 3, lines 14-30*. Likewise, various literature publications also disclose the use of amine salts as biocides, *see Baley, G.J. et al., "Bactericidal properties of quaternary ammonium compounds in dispersed systems," J. Pharm. Sci. 1977 May, 66(5), 696-9; Bodor, N. et al., "Soft drugs. 1. Labile quaternary ammonium salts as soft antimicrobials," J. Med. Chem. 1980 May, 23(5), 469-74; and Imam, T. et al., "Preparation and antimicrobial activity of some new bisquaternary ammonium salts," Pharmazie. 1983 May, 38(5), 308-10*. For the convenience of the Office, U.S. Patent No. 5,529,713 and abstracts of the aforementioned articles are provided herewith via IDS.

In view of the understanding of those skilled in the art regarding the biocidal activity of amine salts, as evidenced by the patent and technical literature discussed above, Applicants respectfully submit that one skilled in the art would likely attribute the anti-microbial activity of the De Gray compositions to the amine salt portion of the composition, and thus would not be motivated to modify the borate portion of those compositions to meet the limitations recited in Claims 1-3, 8 and 9. In the absence of a motivation to modify the cited reference, there is no *prima facie* case of obviousness. *See M.P.E.P. § 2143*. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of Claims 1-3, 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over De Gray.

Allowable Subject Matter

Applicants acknowledge the indication by the Office that Claims 4-7 are allowable. Applicants respectfully submit that Claims 4-7 (as well as Claims 1-3 and 8-9) recite a combination of limitations that are neither taught nor suggested by the prior art of record, each reference considered alone or in combination with any other(s).

Conclusion

Applicants respectfully submit that the instant claims are in condition for allowance, early notification of which would be appreciated. Applicants respectfully invite the Office to contact the undersigned with any questions regarding this application.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 10/7/04

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